

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:05-cr-00118-01

ROOSEVELT SMITH,

Defendant.

**MEMORANDUM OPINION AND JUDGMENT ORDER**

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

The defendant's original offense conduct resulted in a base offense level of 26, and a criminal history category of IV. The defendant's level was then decreased by three levels for

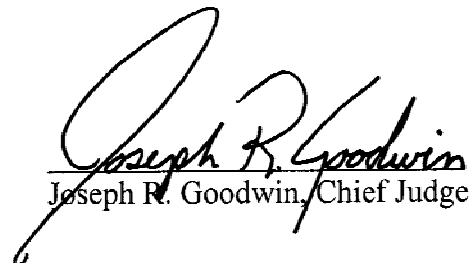
acceptance of responsibility, for a total offense level of 23. His original guideline range was 70 to 87 months. Based on the sentencing factors set forth in 18 U.S.C. § 3553(a), the Court sentenced the defendant within the Guideline Sentencing Range to 72 months imprisonment.

If the court applies the amended Guidelines to this case, the defendant's new base offense level would be 24, and his total offense level would be 21. An offense level of 21 and a criminal history category of IV results in a guideline range of 57 to 71 months imprisonment, adjusted to 60 to 71 months as a result of the mandatory minimum sentence of 60 months. The United States has indicated that it does not object to a two-level reduction in the defendant's sentence.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that the defendant's base offense level be reduced by two levels, resulting in a new total offense level of 21, and a guideline range of 60 to 71 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of **60** months, with credit for time served to date pursuant to U.S.S.G. 1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: April 11, 2008

  
Joseph R. Goodwin, Chief Judge